

In this case, at least requirement (b) above has not been met. That is, claim 8 is directed to a unitary multi-function bracket comprising a face branch for fixing the bracket to a wall, means for supporting a bearing of a rotary shaft, and a tab for fixing the bracket to a slideway. The Examiner's grounds of rejection—in this and the previous application—are based on Cattaneo. However, these grounds of rejection are not properly applied to at least claim 8. That is, as noted below with respect to the rejection under § 102, Cattaneo fails to disclose a means for supporting. Accordingly, the Examiner's rejection of claim 8 is not proper, and, thus, this claim could not have been finally rejected on the grounds and art of record in the next Office Action if they had been entered in the earlier application.

Further, in the previous application, claim 8 did not include a “means for supporting”, which was added by an Amendment filed on August 6, 2003 together with the RCE. If amended claim 8 was presented after final Office Action in the parent application, certainly the amendment would have been denied entry as presenting a new issue requiring further consideration and/or search by the Examiner due to the new limitation that the bracket include “means for supporting a bearing of a rotary shaft”; previously there was no such recitation of a “means plus function” element. However, because amended claim 8 was not presented in the parent application and was not denied entry in the parent application, this determination becomes very subjective depending upon what the Examiner “might have done” if presented with such a situation. Here, the Examiner is being less than genuine when he asserts that if presented in the parent application, he would not have issued an Advisory Action denying entry of the amendment.

For the above reasons, Applicant respectfully requests that the Examiner withdraw the finality of the May 9 Office Action.

Election / Restriction

Claims 3 and 4 have been withdrawn by the Examiner as being directed to a non-elected invention.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejected claims 7-9 under §102(e) as being anticipated by US Patent 5,655,586 to Cattaneo (hereinafter Cattaneo). Applicants respectfully traverse this rejection because Cattaneo fails to disclose every element as set forth and arranged in Applicant's claims.

Claim 8 sets forth a unitary multi-function bracket comprising a face branch including at least one hole therethrough, a means for supporting a bearing of a rotary shaft, and a tab including at least one hole therethrough. The "means for supporting" performs the function of supporting a bearing of a rotary shaft. This element is set forth as a function without any specific structure for performing that function and, therefore, is subject to interpretation under §112, 6th paragraph. Under this paragraph, unless an element performs the identical function specified in the claim, it cannot be an equivalent. *Pennwalt Corp. v. Durand-Wayland, Inc.*, 883 F.2d 931, 4 USPQ2d 1737 (Fed. Cir. 1987), *cert denied*, 484 U.S. 961 (1988). See also MPEP §§ 2183, 84

Accordingly, for the prior art to anticipate claim 8, it must disclose structure that performs the identical function as described in the "means for" clause of claim 8. In this case, Cattaneo teaches only a "flank 1" for a box that supports a shaft or axle running on side guides.¹ That is, the "flank" is only a cover for the main box, and it is the box that supports the axle; the flank itself does not support the axle. Indeed, Cattaneo's figures support this interpretation. First, in Fig. 1, Cattaneo shows the flank 1 as including only holes having an axis perpendicular to the sheet of the paper; there are no mounting holes that extend in the plane of the paper so as to mount the structure shown to a supporting wall. Accordingly, the flank 1 is mounted—via the holes extending in a direction perpendicular to the sheet of the paper—to the main box. And it is the main box (not shown in Cattaneo) that supports the axle. Second, as shown in Fig. 2, the flank 1'—which is used in connection with the flank 1—includes only structure other than an axle extending from the center thereof. And such structure is not a bearing for supporting the axle. Accordingly, contrary to the Examiner's assertion, there is evidence in Cattaneo to suggest

¹ Cattaneo at col. 1, lines 14-24.

that the hole in the middle of the flank 1, 1' is not capable of supporting a bearing of a rotary shaft.

Thus, because Cattaneo does not disclose a structure that performs the exact same function of "supporting a bearing of a rotary shaft" as set forth in claim 8, it fails to anticipate this claim. Likewise Cattaneo fails to anticipate dependent claims 7 and 9.

Claim Rejections - 35 U.S.C. § 103

The Examiner rejected claims 5 and 6 under §103(a) as being unpatentable over Cattaneo. Applicant respectfully traverses this rejection because Cattaneo fails to teach or suggest all the elements as set forth in Applicant's claims.

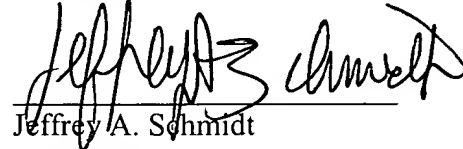
The Examiner asserts that although Cattaneo does not disclose the type of material from which the bracket is constructed, it would have been obvious to choose the materials as set forth in Applicant's claims. For the sake of argument, even assuming the propriety of the Examiner's assertion, Cattaneo still fails to teach or suggest a means for supporting, as set forth in Applicant's claims. Accordingly, Cattaneo fails to render obvious claims 5 and 6.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Jeffrey A. Schmidt
Registration No. 41,574

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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